

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 432, 435 and 440 of 1986

IN THE MATTER OF applications by
the Tasmanian Public Service
Association, the Tasmanian Trades
and Labor Council and the
Association of Professional
Engineers, Australia, to vary
awards by 2.3% in accordance with
the national wage case decision

re commitments of registered
organizations to Guidelines

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER GOZZI

HOBART, 6 August 1986

**TRANSCRIPT OF PROCEEDINGS
(RESUMPTION)**

PRESIDENT: Are there any alteration to appearances earlier announced in this matter?

MR IMLACH: If the Commission pleases. An alteration to appearances. I appear for the Hospital Employees' Federation of Australia (Tasmanian No. 1 Branch), **PETER IMLACH**.

PRESIDENT: Thank you, Mr Imlach.

MR HYNES: If the Commission pleases, I appear in addition to Ms Gail Crotty - **TERRY HYNES** for the Tasmanian Teachers' Federation.

PRESIDENT: Thank you, Mr Hynes.

MR BUTLER: If the Commission pleases, I appear on behalf of the Australian Workers' Union - **JOHN BUTLER**.

PRESIDENT: Thank you, Mr Butler.

MR FOX: If the Commission pleases, I appear on behalf of the Tasmanian Technical Colleges Staff Society, **M.J. FOX**.

PRESIDENT: Thank you, Mr Fox.

MR WALSH: **STEVE WALSH**, appearing on behalf of the Printing and Kindred Industries Union, Tasmanian Branch.

PRESIDENT: Thank you, Mr Walsh.

MR KENNY: If the Commission pleases, **KENNY A.** appearing on behalf of the Amalgamated Metal Workers Union as well as the Electrical Trades Union.

PRESIDENT: Thank you, Mr Kenny.

MR HARPER: If the Commission pleases, **ARTHUR HARPER**. I appear on behalf of the Australasian Society of Engineers as well as on behalf of the Federated Ironworkers' Association.

PRESIDENT: Thank you, Mr Harper.

MR THOMPSON: If it pleases the Commission, **THOMPSON W.B.** I appear on behalf of

MR THOMPSON: the Operative Painters' and Decorators' Union and the Plumbers and Gasfitters Union.

PRESIDENT: Thank you, Mr Thompson.

MR REID: If the Commission pleases, **JOHN REID** on behalf of the Tasmanian Institute of Superintendents of Education.

PRESIDENT: Thank you, Mr Reid.

MRS SMYTHE: If the Commission pleases, **ERIS SMYTHE**, on behalf of the Australian Theatrical Employees' Association.

PRESIDENT: Thank you, Mrs Smythe.

I have also received a telephone apology from Mr Taylor, representing the Australian Mines and Metals Association.

STATEMENT BY PRESIDENT

In my capacity as President of this Commission, I have become increasingly concerned about recent developments regarding a situation referred to by Mr. Willingham during the State wage case.

I refer, of course, to the difficulties the Government perceives in meeting existing labour costs for the ensuing 12 months.

I am mindful of the fact that neither the Government nor the trade union representatives opposed extension of the centralised wage fixing system for a further 2 years. And no-one opposed adoption of the 12 Principles of wage determination that go to make up that arrangement.

However, it is now a matter of public knowledge that there exists an unresolved dispute of major proportion between the Minister for Public Administration, as nominal employer of State employees, and the Trades and Labor Council, representing the bulk of the trade union movement, including of course,

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all public sector employee organisations.

Because of the gravity of the situation, this dispute cannot be allowed to continue unchecked. Despite the tireless efforts of key personnel involved in negotiations, both inside and outside the Commission, it would appear little or no progress has been made in bringing this dispute to an end.

There is no doubt that, generally speaking, parties should attempt to settle their own differences before seeking the assistance of a third or intermediary body. But when all the external conciliatory processes have been exhausted without avail, it is, I believe, incumbent upon the parties to a dispute to seek the assistance of this Commission to settle the matter by conciliation, or if that fails, arbitration.

It is not good enough for one side or the other - or perhaps both, in the certain knowledge of a deteriorating industrial situation, to turn away from the authority they have themselves established to regulate industrial relations in this State.

In the instant case, it seems to me there is reposed in the Commission sufficient flexibility to arbitrate on the merits of the issues between the parties without putting at greater risk, than is already the case, the somewhat precarious system of centralised wage fixation now in place. And while the Commission is able to move of its own motion in this regard, it would be a sorry state of affairs if it were forced to do so without an application.

If neither party to the dispute is prepared to have the merits of this case determined by an independent tribunal, that fact alone could be interpreted to mean there is either a lack of confidence in the tribunal itself or perhaps some reluctance to

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PRESIDENT:

debate the merits of the case a recalcitrant party might need to put in support of its present position.

For all these reasons, I have considered it appropriate to recall this State Wage Bench. This is not a re-hearing of a matter already decided. But rather a first step in the process necessary to afford an applicant in that regard opportunity to examine with the Commission the effect our decision of 22 July has had, or will have, on public sector awards in general and State employees in particular.

This may seem to be an unusual course to follow. But in view of the public interest that has been generated, it is, I feel, justifiable in the circumstances. In deciding upon this course, I have been influenced by the fact that in all probability a significant number of dismissals may take place in order to in part fund the cost of the recent 2.3 per cent economic adjustment, along with other Government strategies.

If that is to be the likely outcome, it seems to beg the question - why an application pursuant to Principle 12 has not been made?

All parties have either enthusiastically or philosophically supported the Commission's adoption of Principle 12. But, at this stage, no attempt has been made to invoke it in seeking a resolution of the matter at issue. And while we have made it clear that this principle should not be regarded as one to be called in aid "willy nilly", it may be that the circumstances of the current dispute are such that this is the appropriate mechanism by which to have the merits of the present issue properly ventilated and ruled upon by the Commission.

In this regard, we are, of course, in the hands of the parties. But let me on my own behalf and from the Bench now make one final observation:

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PRESIDENT:

If, as a consequence of this dispute, centralised wage fixation as we know it, comes to a premature end in this State, it will not be because that is what this Commission believed should happen, but because the users of the system have either made it, or want it to happen."

Commissioner Gozzi?

COMMISSIONER GOZZI:

Yes, thank you, Mr President. In support of what the President has stated, I have a statement of my own which I would like to read to you:

"Before us today we have assembled some of Tasmania's foremost and most influential industrial practitioners.

People, I believe, with a great deal of influence.

It is deeply disappointing to me that you, as the key spokesmen and spokeswomen in this complex dispute have not found the where with all, or more bluntly, the goodwill to overcome the loss of 400 or more jobs in the State public sector.

It is obvious to me that the principal parties have, in the end, no wish to have their respective proposals tested in this Commission by way of a formal hearing.

That in itself is a very sad day for this Commission. But more importantly, it is a sad day for those who have supported and support an orderly system of industrial regulation which has as one of its main stays, the arbitration of matter which cannot be agreed upon.

One has to be very cognisant

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of the fact that this dispute is not simply about the right of an employer to reduce its workforce, and this Commission has repeatedly stated that it will not assume the role and functions of the employer.

This dispute is centred on the strong disagreement between the parties on appropriate measures that may be able to be taken to avoid sackings and at the same time produce savings which will reduce the Government's wages bill.

The parties have openly admitted that there are possible measures available which, in some cases, could save in excess of the \$7.5m required.

It is obvious, however, that agreement is unable to be reached on what those measures should be.

Because of the lack of agreement on what the Government considers to be a viable alternative, the Government has adopted a position that a reduction of 400 employees is the only course left open to it and wishes to now focus on when those reductions should be implemented.

In my view, that course of action is premature.

The available processes offered by this Commission and which are available to the parties have not been exhausted.

In my opinion, in the absence of the pursuit of a resolution through the

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processes available to the parties in this Commission, the genuineness, the real desire to find an appropriate alternative to sackings is highly questionable.

The Government has said publicly that a deferral for 12 months of the 17 1/2% annual loading with no catch up would save jobs.

In the absence of agreement between the parties on that matter, I can think of 400 compelling reasons why this proposition should be tested in this Commission.

There has also been talk of a phased introduction of the 2.3% National Wage increase as another proposition to save jobs.

Yet this morning, there is the opportunity to ask the very Full Bench that was asked to flow-on the 2.3% increase, on 10 July which is less than a month ago, to consider how this should be done. I suspect little, if any, response to this proposition.

Given the implementation of viable alternatives which will save jobs, the objective of attaining a leaner State Service can still be achieved through natural attrition and other measures.

Most thinking people understand the financial difficulties faced by the State Government. There is community support to tighten the belt.

Hard times bring people together and given goodwill and unity of purpose new

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heights can be achieved.

It is incomprehensible to me that in asking people to face up to the challenge that lies ahead for this State that the opportunity provided by this Commission to arbitrate on the merit of propositions which may save the necessary funds and, at the same time save jobs, is not taken up.

The Act establishing this Commission contains very unique provisions in respect of Public Interest. The parties are aware of the far reaching extent of those provisions which would allow almost any matter to be considered and which has a bearing on the Tasmanian economy and on employment.

This aspect, together with Principle 12 of the Wage Fixing Principles gives the widest opportunity to the parties to frame an application for determination by the Commission.

Many of you in this room have had an input to the formulation of what is now the Tasmanian Industrial Relations Act 1984.

That you should wish now, to walk away from the arbitral processes before they have been exhausted leaves me disillusioned and greatly disappointed."

PRESIDENT:

Would anyone wish to comment?

MR LENNON:

Mr President, would it be possible for us to get a copy of the 2 statements that have just been made?

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PRESIDENT - COMMISSIONER GOZZI -
LENNON

PRESIDENT:

In due course. We can get you a copy shortly, Mr Lennon.

Perhaps we should adjourn for a few moments and obtain some copies.

...

PRESIDENT:

Mr Lennon?

MR LENNON:

Yes, Mr President.

PRESIDENT:

Do you wish to respond to any of the statements that fell from this Bench this morning?

MR LENNON:

In respect of what Commissioner Gozzi had to say, Mr President, I certainly would like to make some comments.

For our part, our bona fides in this dispute are very clear with respect to the role that we saw that the Commission had. And I remind the Commission, the Trades and Labor Council has made 2 separate applications to have this dispute dealt with before this Commission and the Deputy President has been hearing a matter under section 29 which was lodged by us. An interim decision with respect to that matter which was lodged by us was handed down by him yesterday.

Clearly as it was only an interim decision in the Deputy President's own mind he would therefore, I would suggest, believe that the processes under that have not been exhausted, otherwise he would have handed down a full decision.

So I believe that it is not proper to say that, as Commissioner Gozzi has said on the front page (the first page of his statement):

"It is obvious to me that the principal parties have, in the end, no wish to have their respective proposals tested in this Commission..."

because, clearly, our bona fides are clear and in the absence of the Government lodging any application to have the dispute referred to you, we lodged one ourselves - not 1 but 2.

Certainly I am at a loss to understand how we could be, in any way ... or it could in any way be

MR LENNON:

indicated that our bona fides are somewhat circumspect in this issue because, as I say, we could do no more than what we did.

With respect to the comments that you made in your statement, Mr President, we note them. We have no specific thing to say at this stage and at this stage I have nothing further to add.

PRESIDENT:

Thank you, Mr Lennon.

COMMISSIONER GOZZI:

Mr Lennon, do you see a section 29 hearing having the force of a formal application to be tested under other sections of the Act or the Wage Fixing Principles in respect of award variations? How can you vary an award under section 29 without a formal application? Are you suggesting that this Commission does something with respect to section 29 that it hasn't done at this stage?

MR LENNON:

Well, my recollection of the Act, Mr Commissioner, is that the Commissioner hearing an application under section 29 has powers under section 31 to do a number of things, including directing parties to make applications for an award hearing.

COMMISSIONER GOZZI:

Do you think in the circumstances though, Mr Lennon, that it would be appropriate that the Deputy President order the parties to make an application? Wouldn't you consider that the onus would be on the parties in the circumstances to make an application?

MR LENNON:

The onus certainly isn't on us, Mr Commissioner.

PRESIDENT:

Does anybody else wish to address us on what has been said this morning? Mr Willingham?

MR WILLINGHAM:

Mr President, if I may enquire of the Commission if it is your intention to sit this afternoon if necessary. For my part I would prefer to be able to take back to the Government the

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MR WILLINGHAM:

statements that have been made by the Bench this morning and give them an opportunity to digest those and, at the convenience of the Commission and the other parties, to return this afternoon with a considered response.

PRESIDENT:

Yes, would you just bear with us for a moment, Mr Willingham.

...

We'll answer that in a moment, Mr Willingham. The Deputy President wishes to say something.

DEPUTY PRESIDENT:

I would just like to draw attention to the fact that in the interim decision, which I issued late yesterday, I said a number of things and in particular I believe the first matter on page 7 of that statement goes to the question which has been raised in relation to the powers and functions of section 29 as opposed to other sections of the Act.

As the parties involved will appreciate, time really didn't permit for a lengthy document to be put out. However, that to which I draw attention reads as follows:

"The Full Bench convened for tomorrow, Wednesday 6 August, should receive the co-operation of the parties as an avenue with different powers and functions to section 29."

Thank you.

COMMISSIONER GOZZI:

That, Mr Lennon, is the point that I wished to make in my statement. I certainly don't question that the trade union movement have (and I think quite correctly) made applications, and I applaud that situation. But I think in light of where these discussions have gone, and the interim decision of the Deputy President, that my comments about an application picked up that

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COMMISSIONER GOZZI:

point that section 29 really is limiting in the context of what this Commission can now do as constituted and it may not be appropriate - I say it 'may' not be appropriate - in the circumstances that the Commission invoke the authority of section 29 by issuing an order in the circumstances; if that clarifies the situation for you.

PRESIDENT:

Mr Willingham, we think it would be appropriate to adjourn these proceedings to allow any party an opportunity to give a considered reply. That being the case, we will reconvene, if it is convenient, at 3.30 this afternoon.

Mr Commissioner Gozzi has another matter on at 2.30.

...

PRESIDENT:

Mr Willingham?

MR WILLINGHAM:

Thank you, Mr President. Let me say that the Government is appreciative of the adjournment which you granted and in that period of time, the Government has a statement which it has prepared which goes to its position in this matter and I seek leave of the Commission to read that statement.

PRESIDENT:

Yes, Mr Willingham.

Mr Deputy President:

"Since May 1985 the Commonwealth Government has cut funding to Tasmania by \$150 million a year. This year alone the State has received further cuts of \$90 million. In addition, the Government has been advised that it will lose a further \$19 million in the 1987/88 financial year as a result of the full implementation of the Grants Commission recommendations.

That \$150 million represents a massive withdrawal of funds from the Tasmanian economy. It is the equivalent of 27 per cent of the Salaries and Wages Bill for Government employees funded from consolidated revenue. It also represents the equivalent of the cost of running the Tasmanian Police Force for almost four years.

The cuts are of a proportion which have required drastic action on the part of the Government whose responsibility it is to manage the financial and economic affairs of this State.

The Government's approach to dealing with this problem has been to endeavour to spread

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the burden as evenly as possible between the Tasmanian community, the Government and the business community. Substantial increases in state taxes and charges have already been approved by Parliament. These measures will raise \$37.5 million in this financial year and \$47.5 million in a full financial year. This additional impost, which is equivalent to more than \$100 for every man, woman and child in this State, will have a significant impact on the whole community, but especially on the business community and people employed in the private sector.

In addition to raising additional revenue, it will be necessary for the Government itself to substantially reduce its own expenditure in order to live within our means, maintain essential services at a standard acceptable to the Tasmanian community and continue with the capital works program to provide essential schools, hospitals, roads and other necessary infrastructure.

In approaching the problem of reducing the Government's expenditure, the Government has placed the highest priority of maintaining people in jobs, while at the same time attempting to eliminate waste and inefficiency.

Because of the cutback of \$19 million which is to occur next financial year, the Government has taken the view that it would be grossly irresponsible of it not to

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aim to achieve a balanced budget for 1986/87.

In approaching the problem of how to reduce expenditure by the massive amount necessary and at the same time maintaining the maximum level of employment, the Government has adopted as policy the principle that it is better to ask our higher paid Government employees to take a very modest reduction in salary for a period no longer than twelve months and without effect to superannuation arrangements, rather than to retrench employees.

The Government is firmly of the view, notwithstanding Industrial Relations traditions as espoused in some quarters that Award conditions are sacrosanct, that such modest salary reductions represent a far more acceptable alternative to the vast majority of Tasmanians.

The Government is also taking the view that people such as Cabinet Ministers, Judges, and Legislative Councillors and other members of Parliament should set an example by being prepared to take a larger reduction than those on lower rates of pay. We are also taking the view that people earning less than \$20,000 a year are less able to afford a reduction in pay, and therefore if possible should be exempted from the cuts.

In framing the Consolidated Revenue Budget for 1987/87, the initial estimates of

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revenue was \$1,055.4 million. This compared with an estimate of expenditure of \$1.151.9 million. This left a gap of \$96.5 million to be funded by additional revenue raising measures or reductions in recurrent Government expenditure.

Since those estimates were prepared the Government has cut \$34.8 million from its expenditure. The revenue raising measures recently announced will provide a further \$37.5 million. This means there is still a shortfall of revenue over expenditure of \$24.2 million.

The Government believes that the additional tax imposts on Tasmanians and the business community already create a heavy burden. It does not believe that it is reasonable or in fact possible for it to raise substantially more by those means.

The Government has taken the view that it must reduce Government expenditure by a further \$20 million, and that because other areas of Government expenditure have now been reduced as far as practicable, these savings must be made in salaries and wages.

The Government anticipates that \$6 million of the \$20 million will come from the non-filling of 400 positions as they become vacant. This leaves a further \$14 million still to be identified. In approaching this problem, the Government considered a number of options and had discussions with the public

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sector unions. The options were:

1. To oppose the 2.3% national wage increase, or
2. To ask its employees to take a week's leave without pay, or
3. To ask its employees to forego the 17.5% holiday leave loading, or
4. To ask our employees to accept a modest reduction in salary for 12 months only on a graduated basis from 1 to 5 percent on salaries in excess of \$20,000, to include Members of Parliament, Judges and Industrial Commissioners.

After consultation with the unions, Options 1, 2 and 3 were set aside on the basis that they would impact heavily on our lower income employees.

The unions proposed that further savings in Government expenditure could be achieved and undertook to indicate where such savings could be made.

The unions aborted discussions aimed at identifying these savings and the proposals which they publicly announced did not represent significant savings.

The Government adopted the view that its preferred option to reduce salaries and wages should be determined by the Parliament, which comprises democratically

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elected representatives of the people, because it holds the view that this is a temporary measure required to be implemented at a time of crisis which is not related to whether the salary levels of our employees are justified or not but to the basic question of maintaining maximum levels of employment and avoiding the retrenchment of some of our employees."

It is the Government's view that misrepresentation and misunderstanding of the Government's position by some elements of the community resulted in the deferral of that Bill.

"Since that deferral, attempts have been made by the Government to negotiate a satisfactory arrangement with the union movement which would achieve the objective of saving the full \$20 million and keeping all of our employees in jobs. Despite the very best efforts of the Government and the willingness to provide substantial concessions in the form of additional benefits for our employees, those negotiations have been unsuccessful.

The union representatives put forward proposals to defer the 17.5% leave loading and subsequently to that defer for varying periods the introduction of the 2.3% national wage flow-on. On both occasions, having put those proposals forward, the unions then withdrew them, saying that award conditions were not under any circumstances negotiable. The position of the unions as the Government now

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understands it, is that the unions would seem to prefer retrenchments to any modest temporary pay reduction.

The Government regards the unions' position as totally unreasonable and not in the best interests of the Government's employees.

As regards efforts at achieving a negotiated settlement in this matter, the Government's conscience is entirely clear. It has done everything that could reasonably be expected of it in that regard but at each step the union response has been one of prevarication, resistance or distortion.

The Government has the responsibility for the management of its affairs and the economic wellbeing of all Tasmanians. In finalizing the budget the full savings of \$20 million will have to be achieved.

In the light of statements issued from this Bench this morning and the clear indication that the Commission is prepared to resolve these matters by way of arbitration, the Government indicates its intention to shortly submit applications to the Commission pursuant to Section 23 of the Industrial Relations Act. These applications will seek a determination of a claim for suspension for 12 months, without catch-up, of the 17.5% leave loading or deferral of the introduction of the 2.3% national wage case flow-on."

MR WILLINGHAM:

Mr President, I might add that those applications have in fact been lodged with the Registrar this afternoon.

"Negotiations with the Unions have now extended over a month and the matter has to be finalized. In view of all the circumstances the Government seeks the co-operation of the Commission in resolving this issue as a matter of extreme urgency.

Unless the savings can be made the Government will have no option but to proceed with the retrenchments."

If the Commission pleases.

PRESIDENT:

Thank you, Mr...

MR WILLINGHAM:

Mr President, could I just add that I have copies of that statement available for the Bench and limited copies available for interested parties. I will pass those up.

PRESIDENT:

Thank you, Mr Willingham.

PRESIDENT: Mr Willingham, would you be in a position now to indicate to the Commission when you would be prepared to proceed on - did you say two applications?

MR WILLINGHAM: Yes, sir.

PRESIDENT: Which, logically, ought to be joined, I imagine.

MR WILLINGHAM: Indeed, that would be our intention.

PRESIDENT: Well, when would you be prepared to proceed?

MR WILLINGHAM: At the convenience of the Commission, but preferably not this afternoon.

PRESIDENT: I can assure you it won't. I imagine, Mr Willingham, a number of people, in light of this turn of events, will probably want to catch their breath.

Perhaps I ought to announce, from this Bench, that the composition of the Bench to hear those applications will be the same as presently constituted and that, in order to clear the way for unimpeded consideration of at least one of those applications, we will now rescind the authority given individual Commissioners to process the 2.3% adjustment to State awards pending determination of the claims now filed.

As to dates - and of course, no doubt it is a question of service of the claims upon the parties, which could be arranged for this afternoon if the parties wish to (the principal parties, that is) receive copies of the application. We could set aside...

...

Mr Willingham, we could set aside two days commencing Monday 11 and 12 of this month, to be followed by a further two days, if necessary, on the following Monday and Tuesday the

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18th and 19th.

There is another major matter that would preclude us from setting aside a whole week (and you would be aware of that, I am sure).

Would those dates suit other principal parties?

MR WILLINGHAM:

It would certainly suit us.

MR LENNON:

Mr President, I haven't got my diary with me and I am not aware of the availability of the other principal parties within our organization.

Could I just, while I am on my feet, also clarify exactly the statement you made with respect to the rescinding of the orders and what awards you were talking about?

PRESIDENT:

Yes, Mr Lennon. It is no more than a formality, of course. In view of the fact that I have announced that the Bench to hear the two applications will be this Bench, and having regard for the fact that at the conclusion of the national wage hearing we formally referred to individual Commissioners' responsibility for giving effect to the 2.3 adjustment, in order that this Commission may take unto itself sufficient jurisdiction to deal with this present application it will be necessary to bring that responsibility for the implementation of the 2.3% back to this Bench.

The awards would obviously be the awards referred to in the application that you have not yet seen but would not affect private industry awards.

Mr Willingham may have a copy of the application to identify the awards. We can arrange a copy of the application, Mr Lennon. Does that answer your question?

MR LENNON:

Well, in terms of the order that you are making, I think that it is necessary for everyone to be very

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MR LENNON:

clear in their own mind exactly what awards we are talking about in the application that has been lodged, so that we can report accurately to the people that we need to with respect to what is exactly being proposed now.

What awards are the Government seeking to do certain things in? I mean, I'm not too sure what their application is.

PRESIDENT:

I understand that, Mr Lennon. We must be very careful that we are not intruding details of 2 other applications into this national wage thing. But I certainly understand your position and perhaps we could arrange for a copy to be obtained now; perhaps a couple of copies.

Yes, Mr Grant, do you want to leave the room?

MR GRANT:

If the Commission please, for what it is worth, notice has been received in our office this morning that there is a Full Bench hearing on another matter on the 8th. I just say that for what it is worth.

COMMISSIONER GOZZI:

Yes, Mr Grant. In trying to accommodate, as quickly as possible, the matters that have been referred to by Mr Willingham, I have indicated to the President that the nurses' matter on the 8th will go ahead, but that we would seek to defer the hearing on the 11th and, with the agreement of Mr Jarman who indicated his agreement to me, the 12th (as we were signalling across the table; the 12th, I have a matter with him) that that would be set aside. So that is the 11th and 12th cleared up.

The nurses' matter on the 18th - we would seek to defer that because we have got 3 days later in that week that we can hopefully pick up time. Also, that day that we lose on the 18th, we can pencil in on the 25th. So, substantially, the dates that you

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COMMISSIONER GOZZI:

have for your hearing are unaltered with the exception of those 2 days which are in between other hearings anyway. But the bulk of the days - the 20th to the 22nd will go ahead and we can pick up the day that we lose on the 18th, on the 25th.

PRESIDENT:

And for those interested in the appeal against Mr Commissioner Watling's decision in the Agriculturist Award, other arrangements will need to be made in that regard, of which due notice will be given to the parties.

...

Yes, Mr Lennon.

MR LENNON:

Mr President, through you, I would like to ask a couple of questions of the Government. In view of the fact that they have lodged these applications at this late hour and they have had such a sudden change of heart with respect to the proper processes upon which this matter should be dealt with, in their view, can the Government indicate to the Commission now what action they would take with respect to their employees if this application was unsuccessful?

PRESIDENT:

Mr Willingham.

MR WILLINGHAM:

That I will have to address ... That matter was properly before the Commission, has been determined by the Commission and should be quite sufficient comfort for Mr Lennon who's been seeking that, publicly, now for some considerable time.

PRESIDENT:

I take it, Mr Willingham (before you get up, Mr Lennon) that in any case the lodging of these applications will mean that no dismissals are imminent at this stage?

MR WILLINGHAM:

I would think that was implicit in the lodging of the application, Mr President.

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WILLINGHAM - LENNON

MR LENNON:

Mr President, in the statement which the Government has just read to this Commission, they indicate that if savings of 20 million aren't made, then retrenchments will have to take place. I think the very fair question which needs to be answered is: Is this Commission under a cloud, if you like, that if it doesn't find in favour of the Government then they will proceed with their sackings anyway? I just wonder whether that really allows the matter to be tested on its merit. And I believe that the Government has a responsibility to indicate to this Commission and to the parties who would be involved in this hearing, what their response would be if, in effect, they were unable to convince this Commission in respect to the applications that they now have before it.

MR WILLINGHAM:

Mr President, I can assure you that will be a matter that will be addressed as a threshold point in the proceedings which commence before you on the 11th.

MR LENNON:

Through you again, Mr President, my next question is: Has the Government made any applications to the Conciliation and Arbitration Commission, nationally, for a similar application to be made with respect to federally-covered employees?

MR WILLINGHAM:

Mr President, hopefully for the last time, the answer to that is, 'No'.

MR LENNON:

Again through you, Mr President, can you indicate to the trade unions how the Commission views the status of the commitments that we were asked to give in response to the decision of the 2.3 national wage increase which this Bench handed down?

PRESIDENT:

Say that again, Mr Lennon, I am sorry.

MR LENNON:

How does the Commission view the status of the commitments (bearing in mind that we were asked to give a

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MR LENNON:

commitment to a decision which was handed down - to a decision and a hearing which was concluded when we had the commitment phase of the hearing); how does the Commission view those commitments, given that you have now allowed, in some form, the 2.3 to be put back on the table, so to speak?

PRESIDENT:

Well, that last part is not right, Mr Lennon. We have done no more than remove from individual Commissioners responsibility of implementing the 2.3%. If you have misunderstood us, that is unfortunate. It is only a machinery matter.

MR LENNON:

Mr President, the effect of it is that the 2.3 will not flow into certain awards as the decision indicated that it should.

PRESIDENT:

Well put it this way, Mr Lennon, the decision of the Commission also indicated that any unsuccessful application pursuant to Principle 12 (and I presume that that is what these applications are) would result in the amounts sought to be deferred or modified or altered in some way, being made applicable from the same operative date. That, of course, is what is said in the national wage decision.

MR LENNON:

I think in the circumstances, Mr President, I would seek a short adjournment so that I can confer with my colleagues with respect to this matter.

PRESIDENT:

Is there some difficulty?

MR LENNON:

Well, I wonder what exactly is the status of the commitments. The trade union movement was asked to give commitments (as I am sure the Commission fully remembers) with respect to that decision which it granted on the 2.3. The commitments were given to the satisfaction of the Commission on the basis that the decision had been granted.

MR LENNON:

The question I posed is: How does the Commission view the status of those commitments in view of the decision that you have just made, releasing the Commissioners from the responsibility of signing orders on the 2.3 into certain awards?

MR JARMAN:

I would like to make a statement before you grant the adjournment.

PRESIDENT:

Well, I still intend to reply to Mr Lennon.

Mr Lennon, we believe that the commitment was to the Principles and the decision - the national wage decision. Now, one of those Principles allowed for applications of the kind being made; perhaps not envisaged at the time that they would be made so quickly.

We would not feel that the commitment given by the trade unions and accepted by this Commission is in any way compromised by this application (bearing in mind that the onus is heavily upon any applicant to prove its case).

Mr Jarman.

MR JARMAN:

Mr President, Mr Lennon has asked, through the Commission, what the Government's attitude would be should the Commission refuse the applications currently before it.

I would pose a question to Mr Lennon. What would the unions' attitude be if one of the applications is granted by this Commission?

COMMISSIONER GOZZI:

Mr Lennon can speak for himself, Mr Jarman, but I read in the Press only a matter of days ago, that the unions would accept the decisions of the Commission if, in fact, the matter was tested.

MR EVANS:

I hope that wasn't 'The Examiner' you were reading.

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PRESIDENT - COMMISSIONER GOZZI -
JARMAN - LENNON - EVANS

COMMISSIONER GOZZI:

Yes.

MR LENNON:

Mr President, if I can just pursue this commitment question a little further. In your decision of the Full Bench, (which I just happen to have with me), it was very clearly pointed out to us that if we didn't give the commitment then the 2.3 would not flow into the awards.

And again I say we have given the commitment on the basis that the 2.3 would flow into the awards.

We have now been advised that it is unlikely that the orders for the 2.3 to flow on to certain public sector awards will not be signed (sic). Again, I ask, what is the status of the commitment, given that? On page 36 I think...

PRESIDENT:

Mr Lennon, did we say that the orders would not be signed? How many times do I have to say it. We have simply facilitated this Bench dealing with those applications; no more and no less. Now, you might on the first occasion we come together stand up and say, 'We would like the 2.3% immediately implemented' and it would be within the power of this Bench to do just that, if that's what you want.

On the other hand, it might be argued that it might be better for all concerned, having regard for the fact that there is before us an application to defer that, that it not be immediately implemented. But the decision of the Commission, at this stage, stands. It is a 2.3% across-the-board decision.

COMMISSIONER GOZZI:

Could I add too, Mr Lennon, that I'm the Commissioner that has assigned to him probably the bulk of the public sector awards and really, while I'm going to be sitting here, I won't be doing anything else. And I see the situation no different as was put during the national wage case hearing

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PRESIDENT - COMMISSIONER GOZZI -
LENNON

COMMISSIONER GOZZI:

when the Tasmanian Farmers and Graziers foreshadowed that if the Principles were, in fact, adopted by this Commission, that they would seek, most likely, an application under Principle 12. And if that was to be the case, the processing of the Horticulturists Award and the Agriculturists Award would not proceed until that matter has been determined.

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COMMISSIONER GOZZI:

So I don't see that we need to be terribly uptight about what has been said. It allows the matter to proceed, and we've already heard from Mr Willingham that there will be a threshold submission on the Government's position if the Commission in fact rules against them as a consequence of these applications being determined. So I see the situation being very much in keeping with what we said in the national wage case and allows the orderly resolution of a dispute that's probably got out of hand.

PRESIDENT:

Mr Lennon, if I could just finish on this. This of course is not an appeal. In an appeal situation, an order is stayed. This is not a stay order. It is simply an application made in accordance with the Principles.

Now, you might argue that the 2.3 percent ought to be paid immediately, in which case this Full Bench, if it is satisfied that that is what should happen after hearing perhaps others, might do just that.

MR LENNON:

Mr President, I thought we had already won that case and that was in the decision of the Full Bench handed down, and we were asked to give commitments on the basis of that decision being implemented.

We gave those commitments to the satisfaction of the Commission and we are now being advised that because an employer has put in a couple of applications to vary awards by certain amounts, that that decision will not be processed for the time being.

PRESIDENT:

I can't keep saying it over and over again, Mr Lennon. We've simply given ourselves the jurisdiction to either implement that decision immediately or at some other time.

We haven't stayed the operation of

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PRESIDENT - COMMISSIONER GOZZI -
LENNON

PRESIDENT: the 2.3 percent.

MR LENNON: Anyway, Mr President, we did ask for an adjournment.

PRESIDENT: Do you still want an adjournment?

MR LENNON: Yes, please.

PRESIDENT: How long? As long as it takes.

MR LENNON: Yes, as long as it takes. Thank you.

PRESIDENT: Very well.

...

PRESIDENT: Mr Lennon?

MR LENNON: Thank you for the adjournment, Mr President. We have, in the short time available to us, considered our position. We have nothing further to add to the Commission at this time, but would seek to have this hearing adjourned sine die.

PRESIDENT: Yes. Mr Lennon, did you indicate that you'd be available on the 11th and 12th and 18th and 19th, or the 11th and 12th first?

MR EVANS: I think it'll take more than 4 days.

PRESIDENT: It may very well.

MR LENNON: As far as I was able to ascertain in the short time available with all my colleagues, Mr President, those dates do appear to be appropriate at this stage, in terms of availability.

PRESIDENT: Yes, thank you.

Well then, ladies and gentlemen, that concludes this hearing. The applications that were lodged today will come before the Commission at 10.30 a.m. on 11 August and such

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PRESIDENT - LENNON - EVANS

PRESIDENT:

other days as the Commission is able
to make available, of which the
parties will be given due notice.

HEARING ADJOURNED